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OFFICE OF PETITIONS

In re Application of :
Johnathan Kahn et al. :
Application No. 10/516,374 :
Filed: November 30, 2004 :
Attorney Docket No. KAHN 0034 :
:

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 12, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the final Office action mailed, January 18, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on April 19, 2007. A Notice of Abandonment was mailed on April 19, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b), (2) the petition fee of \$750.00, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the Office action of January 18, 2007 is accepted as being unintentionally delayed.

The petition is not accompanied by a statement of express abandonment in favor of the filing of a continuing application. In order to facilitate action, the petition to revive should include reference to the filing of a continuing application and a letter of express abandonment conditional upon the granting of the petition and of a filing date to the continuing application. Nevertheless, in view of the statement that the reply is the filing of a continuing application, this will be construed as a request to expressly abandon this application in favor of the granting of a filing date to the continuing application. Accordingly, this application is revived solely for the purpose of continuity with continuing Application No. 11/977,384, filed September 12, 2007. As continuity has been established by the revival of this application, this application is again abandoned in favor of the continuing application. If this was not the intent of applicant, the Office should be promptly notified.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.


Frances Hicks
Petitions Examiner
Office of Petitions